



TJ
DAL

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**PETITION UNDER 37 C.F.R. § 1.81(a) REQUESTING WITHDRAWAL OF
HOLDING OF ABANDONMENT**

APPLICANTS: Gerrit Bleumer CONFIRMATION NO. 2355

SERIAL NO.: 09/728,741 GROUP ART UNIT: 3639

FILED: December 1, 2000 EXAMINER: John M. Winter

TITLE: "FRANKING METHOD AND APPARATUS"

MAIL STOP PETITIONS

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

SIR:

In a Notice of Abandonment mailed June 29, 2006, the above-referenced application was stated to be abandoned due to applicant's failure to file a proper reply to the Office Action dated August 11, 2005 (which was a final rejection). In fact, applicant did file a response to that Office Action on November 14, 2005, and that response was forwarded to the previous Examiner on November 17, 2005. The previous Examiner for this application was Examiner Cosimano, and repeated calls to Examiner Cosimano to determine the status of the application, as the expiration of the six month period for response increasingly became closer, were not returned. Finally, on January 18, 2006, Examiner James A. Reagan responded to the telephone calls of the undersigned counsel or the applicant, and informed the undersigned counsel that Mr. Cosimano had left the Patent and Trademark Office, and Mr. Reagan stated that the changes made in the after final amendment would require extensive consideration by another Examiner, and Mr. Reagan stated it would not be possible to have another Examiner become familiar with the application before the expiration of the six month period for response.

The undersigned counsel informed Mr. Reagan that although admittedly making a large number of changes, the amendment did no more than re-write dependent claims in independent form that were already indicated to be allowable, and make editorial changes to overcome the rejections under Section 112. As such, it is fully compliant with the standards for being entered after a final rejection under 37 C.F.R. § 1.116. Mr. Reagan therefore agreed in this interview that even though the application would be assigned to a new Examiner, under the circumstances of Mr. Cosimano's departure the finality of the rejection would be withdrawn, so that the amendment could be thoroughly reviewed. This statement of Mr. Reagan explicitly appears in the interview summary record dated the same date (January 23, 2006) as the advisory action.

Applicant relied on the agreement at the interview and based on that reliance filed no further papers. In view of the agreement at the interview that the finality of the advisory action would be withdrawn, there was no reason for the applicant to submit another response, since the understanding at the interview was that the present response would be reviewed by a different Examiner without the constraints imposed by a final rejection.

Apparently, this application has now been assigned to Examiner Winter, but the agreements that Mr. Reagan made either were not communicated to Mr. Winter, or were ignored. Applicant has done everything possible to advance prosecution of this application and to avoid abandonment, but the examining group has not followed through to uphold these agreements.

The present Examiner is therefore requested to honor the explicit statement of Mr. Reagan in the interview summary record that the finality of the rejection would be

withdrawn, and to consider the amendment that was filed on November 14, 2005 as a non-final amendment. As noted above, even if the finality of the rejection had not been withdrawn, that amendment is fully compliant with 37 C.F.R. § 1.116, and it should have been examined anyway. The only reason why it did not receive immediate examination at the time it was filed was due to the departure of Examiner Cosimano, and applicant should not be made to suffer because of that fact.

The advisory action correctly reflects the statements of Mr. Reagan at the interview, that, in the opinion of Mr. Reagan, a new search must be conducted. Those statements were made simultaneously, however, with the statement in the interview summary that the finality of the rejection would be withdrawn, and therefore there would be no impediment to making such a new search, if necessary, when the application was assigned to another Examiner. The present Examiner is therefore requested to proceed as agreed upon in the interview with Mr. Reagan.

Since all of the documents noted above are shown in public PAIR as being received at the Patent and Trademark Office and entered into the prosecution file for this application, there is no question that they have been received at the Patent and Trademark Office and made a part of the file. Submission of proof of transmittal and receipt of those documents is therefore not necessary, nor is it necessary to resubmit copies herewith.

Submitted by,

 Steven H. Noll

(Reg. 28,982)

Schiff, Hardin LLP, CUSTOMER NO. 26574
Patent Department, 6600 Sears Tower
233 South Wacker Drive, Chicago, Illinois 60606
Telephone: 312/258-5790
Attorneys for Applicants.



CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on July 31, 2006

Steven H. Noll

STEVEN H. NOLL

CH1\4647029.1